

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 568

Introduced by Senator Wiggins

February 22, 2007

An act to ~~amend Sections 1367 and 1376 of~~ *add Section 1369.1 to* the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Wiggins. Criminal procedure: mental competence.

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. ~~Existing law also authorizes a defendant, in any case in which the prosecution seeks the death penalty, to apply for an order directing that a mental retardation hearing be conducted. If a defendant is found to be mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, during which time the court shall order that the mentally incompetent defendant be delivered to a state hospital or to any other available public or private treatment facility, or be placed on outpatient status, as specified.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~ *provide that the term "treatment facility" as used in these provisions includes a county jail, or other county penal facility, that, upon the concurrence of the county board of supervisors and the county sheriff, the county mental health director, or the chief of corrections, as specified, may be used to provide medically approved treatment of defendants found to be mentally incompetent due to a mental disorder.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1369.1 is added to the Penal Code, to*
2 *read:*

3 *1369.1. As used in this chapter, “treatment facility” includes*
4 *a county jail, or other county penal facility, that, upon the*
5 *concurrence of the county board of supervisors and the county*
6 *sheriff, may be used to provide medically approved treatment of*
7 *defendants found to be mentally incompetent due to a mental*
8 *disorder, pursuant to this chapter. In the case of Madera, Napa,*
9 *and Santa Clara Counties, the concurrence shall be with the board*
10 *of supervisors and the county mental health director, or the chief*
11 *of corrections. The provisions of Section 1370 and 1370.01 shall*
12 *apply to treatment provided in a county jail or other county penal*
13 *facility. The purpose of this section is to allow the incompetent*
14 *defendant to be restored to competency as quickly as possible.*

15 ~~SECTION 1. Section 1367 of the Penal Code is amended to~~
16 ~~read:~~

17 ~~1367. (a) A person cannot be tried or adjudged to punishment~~
18 ~~while that person is mentally incompetent. A defendant is mentally~~
19 ~~incompetent for purposes of this chapter if, as a result of mental~~
20 ~~disorder or developmental disability, the defendant is unable to~~
21 ~~understand the nature of the criminal proceedings or to assist~~
22 ~~counsel in the conduct of a defense in a rational manner.~~

23 ~~(b) Section 1370 applies to a person who is charged with a~~
24 ~~felony and is incompetent as a result of a mental disorder. Sections~~
25 ~~1367.1 and 1370.01 apply to a person who is charged with a~~
26 ~~misdemeanor or misdemeanors only, and the judge finds reason~~
27 ~~to believe that the defendant is mentally disordered, and may, as~~
28 ~~a result of the mental disorder, be incompetent to stand trial.~~
29 ~~Section 1370.1 applies to a person who is incompetent as a result~~
30 ~~of a developmental disability and applies to a person who is~~
31 ~~incompetent as a result of a mental disorder, but is also~~
32 ~~developmentally disabled.~~

33 ~~SEC. 2. Section 1376 of the Penal Code is amended to read:~~

34 ~~1376. (a) As used in this section, the term “mentally retarded”~~
35 ~~means the condition of significantly subaverage general intellectual~~
36 ~~functioning existing concurrently with deficits in adaptive behavior~~
37 ~~and manifested before the age of 18.~~

1 ~~(b) (1) In any case in which the prosecution seeks the death~~
2 ~~penalty, the defendant may, at a reasonable time prior to the~~
3 ~~commencement of trial, apply for an order directing that a mental~~
4 ~~retardation hearing be conducted. Upon the submission of a~~
5 ~~declaration by a qualified expert stating his or her opinion that the~~
6 ~~defendant is mentally retarded, the court shall order a hearing to~~
7 ~~determine whether the defendant is mentally retarded. At the~~
8 ~~request of the defendant, the court shall conduct the hearing without~~
9 ~~a jury prior to the commencement of the trial. The defendant's~~
10 ~~request for a court hearing prior to trial shall constitute a waiver~~
11 ~~of a jury hearing on the issue of mental retardation. If the defendant~~
12 ~~does not request a court hearing, the court shall order a jury hearing~~
13 ~~to determine if the defendant is mentally retarded. The jury hearing~~
14 ~~on mental retardation shall occur at the conclusion of the phase of~~
15 ~~the trial in which the jury has found the defendant guilty with a~~
16 ~~finding that one or more of the special circumstances enumerated~~
17 ~~in Section 190.2 are true. Except as provided in paragraph (3), the~~
18 ~~same jury shall make a finding that the defendant is mentally~~
19 ~~retarded, or that the defendant is not mentally retarded.~~

20 ~~(2) For the purposes of the procedures set forth in this section,~~
21 ~~the court or jury shall decide only the question of the defendant's~~
22 ~~mental retardation. The defendant shall present evidence in support~~
23 ~~of the claim that he or she is mentally retarded. The prosecution~~
24 ~~shall present its case regarding the issue of whether the defendant~~
25 ~~is mentally retarded. Each party may offer rebuttal evidence. The~~
26 ~~court, for good cause in furtherance of justice, may permit either~~
27 ~~party to reopen its case to present evidence in support of or~~
28 ~~opposition to the claim of retardation. Nothing in this section shall~~
29 ~~prohibit the court from making orders reasonably necessary to~~
30 ~~ensure the production of evidence sufficient to determine whether~~
31 ~~or not the defendant is mentally retarded, including, but not limited~~
32 ~~to, the appointment of, and examination of the defendant by,~~
33 ~~qualified experts. No statement made by the defendant during an~~
34 ~~examination ordered by the court shall be admissible in the trial~~
35 ~~on the defendant's guilt.~~

36 ~~(3) At the close of evidence, the prosecution shall make its final~~
37 ~~argument, and the defendant shall conclude with his or her final~~
38 ~~argument. The burden of proof shall be on the defense to prove~~
39 ~~by a preponderance of the evidence that the defendant is mentally~~
40 ~~retarded. The jury shall return a verdict that either the defendant~~

1 is mentally retarded or the defendant is not mentally retarded. The
2 verdict of the jury shall be unanimous. In any case in which the
3 jury has been unable to reach a unanimous verdict that the
4 defendant is mentally retarded, and does not reach a unanimous
5 verdict that the defendant is not mentally retarded, the court shall
6 dismiss the jury and order a new jury impaneled to try the issue
7 of mental retardation. The issue of guilt shall not be tried by the
8 new jury.

9 (e) In the event the hearing is conducted before the court prior
10 to the commencement of the trial, the following shall apply:

11 (1) If the court finds that the defendant is mentally retarded, the
12 court shall preclude the death penalty and the criminal trial
13 thereafter shall proceed as in any other case in which a sentence
14 of death is not sought by the prosecution. If the defendant is found
15 guilty of murder in the first degree, with a finding that one or more
16 of the special circumstances enumerated in Section 190.2 are true,
17 the court shall sentence the defendant to confinement in the state
18 prison for life without the possibility of parole. The jury shall not
19 be informed of the prior proceedings or the findings concerning
20 the defendant's claim of mental retardation.

21 (2) If the court finds that the defendant is not mentally retarded,
22 the trial court shall proceed as in any other case in which a sentence
23 of death is sought by the prosecution. The jury shall not be
24 informed of the prior proceedings or the findings concerning the
25 defendant's claim of mental retardation.

26 (d) In the event the hearing is conducted before the jury after
27 the defendant is found guilty with a finding that one or more of
28 the special circumstances enumerated in Section 190.2 are true,
29 the following shall apply:

30 (1) If the jury finds that the defendant is mentally retarded, the
31 court shall preclude the death penalty and shall sentence the
32 defendant to confinement in the state prison for life without the
33 possibility of parole.

34 (2) If the jury finds that the defendant is not mentally retarded,
35 the trial shall proceed as in any other case in which a sentence of
36 death is sought by the prosecution.

37 (e) In any case in which the defendant has not requested a court
38 hearing as provided in subdivision (b), and has entered a plea of
39 not guilty by reason of insanity under Sections 190.4 and 1026,

- 1 ~~the hearing on mental retardation shall occur at the conclusion of~~
- 2 ~~the sanity trial if the defendant is found sane.~~

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